

SJ 7 Workgroup
Consensus on definitions – February 2008 Meeting

Definitions

Pursuant to Senate Joint Resolution 7 from the 60th Session of the Montana Legislature, a contingent of interested Montanans and employees from the Department of Public Health and Human Services (DPHHS) and the Department of Justice (DOJ) formed a workgroup¹ to address the issue of performing criminal background checks on those individuals who work with vulnerable populations in facilities regulated by DPHHS. From the start, the group determined that criminal background checks are one critical aspect in protecting the health and safety of Montana's most vulnerable populations. Because a study of this magnitude is so complex and involves so many different types of health care workers and health care facilities, the group believed one of its primary charges was to define "direct care worker." The group carefully considered the potential impact that criminal background check requirements would have on facilities, workers and beneficiaries. Striving to meet the charge of the Legislature, considering the needs of employers and regulators and seeking the best path to promote public safety, the group offers the following definitions.

The definition for the "Direct Care Worker" was changed to "Direct Care Access Employee" for the purposes of this project so that the employees covered under this requirement would not be confused with the employees covered under the reimbursement and funding provisions of DPHHS related to increased wages for direct care workers.

Direct care access employee means a person, 18 years of age and older, who has employment or contractual relationship with a service setting that is funded or regulated by the Department and involves direct contact with a vulnerable person. Such term does not include an individual that is employed or providing services through a private arrangement with a vulnerable person or their designated representative.

Vulnerable person means a person who receives services as defined in this act and who needs to be protected from abuse, neglect or exploitation.

Direct contact means physical access to persons receiving services or that person's personal property.

¹ DPHHS Director Joan Miles formed the SJ 7 workgroup consisting of 15 members that include representatives from provider associations, provider community, consumers, citizens' advocacy groups and area business group representatives. Members of the workgroup and members of the public recognized the reason for this resolution, and the current trend to protect society's vulnerable population in government sponsored or supported programs and services. The guiding principle of this work group was to protect the overall safety of the state's most vulnerable residents.

Service setting for the purposes of this act means those programs or services that the legislature has determined to represent the greatest risk to the health, safety, and welfare of vulnerable persons served by the department. Such definition include, as these services are defined in statute and Administrative Rule:

- Youth Care Facilities
- Community home for persons with severe disabilities - Group Homes for Developmentally Disabled or Physically Disabled
- Adult Day Care
- Adult Foster Care
- Assisted Living Facilities
- Critical Access Hospitals
- Home Health agency
- Hospice
- Hospitals (Including inpatient psychiatric services) Montana State Hospital
- Inpatient Chemical Dependency Centers
- Intermediate Care Facility for the Developmentally Disabled
- Mental Health Centers
- Nursing Facility (Nursing Homes) (LTC) (Veteran's Homes) (Montana Developmental Center) (Montana Mental Health Nursing Care Center) (Transitional Care Unit)
- Residential Treatment Center (RTC)
- Home and Community Based Services (HCBS)² *as identified by administrative rule.*
- Personal Care Services

Home and Community Based Services (HCBS) under the Service Settings

Under the service setting definition each HCBS program is required to identify the HCBS services provided by the department and specifically identify those services that require criminal background checks for direct care access employees. *Due to the broad nature of the HCBS services and the fact that some services are provided by contractors for home or vehicle modifications and other services are provided by licensed healthcare professionals, not all of the HCBS services would necessarily require criminal background checks.*

Self-Direct model services

Self-direct model services are included in the service settings. *In circumstances where services are provided under the self-direct model, criminal background checks are required. The provision of services under the self-direct model, where the person receiving services or a personal representative acts as the employer of the direct care access employee in making the decisions of who to employ, terms of employment, length of employment, and other matters, are included in the background check criteria.*

² Section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, provides authority for States to administer programs of home and community-based services funded with Medicaid money for categories of persons with disabilities or persons who are elderly.